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Lorie A. Fridell

Producing Bias-Free Policing

A Science-Based Approach

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This book is for all the "Nikki's" in the world. Nikki emailed me after she saw on the news that I had just completed a 2-day, science-based Fair and Impartial Policing training session in her jurisdiction. With a writing style reflective of the poor education she had received in her low income area, she shared her most recent experience with police, which was ugly. She ended her note with: "So thanks for trying to help them with their biased ways." I can't know whether she was on the receiving end of biased policing, but I have posted her email in my office nonetheless so I don't forget who has the greatest stake in fair and impartial policing.

This book is also for all the cops out there, the overwhelming majority of which are decent hard-working human beings who want to serve their communities to the best of their abilities. I hope this book about human biases will help them do just that.

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About the Author

Dr. Lorie A. Fridell is a faculty member in the Department of Criminology at the University of South Florida (USF) in Tampa. Prior to joining USF in August of 2005, she served for six years as the Director of Research at the Police Executive Research Forum (PERF) in Washington, DC. Dr. Fridell has over 30 years of experience conducting research on law enforcement. Her primary research areas are police use of force and violence against police; she has also conducted recent research on police deviance and the effectiveness of body-worn cameras. Dr. Fridell is a national expert on biased policing. She speaks nationally on this topic and provides consultation and training to law enforcement agencies. Previous publications on this topic include two books: *Racially Biased Policing: A Principled Response* and *By the Numbers: A Guide for Analyzing Race Data from Vehicle Stops* (and the companion guide, *Understanding Race Data from Vehicle Stops: A Stakeholder's Guide*). With her partner Anna Laszlo, law enforcement practitioners, national experts on the psychology of bias, and funding from the US Department of Justice, she has developed five Fair and Impartial Policing training programs for local, state and federal law enforcement personnel (see www.fairandimpartialpolicing.com). She and her fellow trainers administer this training in the United States and Canada.

Chapter 1
Introduction

> *The profound implication of the discovery of implicit prejudice is that anybody is capable of prejudice, whether they know it or not, and of stereotyping, whether they want to or not.*
> (Hardin and Banaji, 2013, p. 23).

It is well documented that police intervene disproportionately with certain groups. Much of the research, for instance, has focused on the disproportionate intervention by police with racial and ethnic minorities (see e.g., Walker et al. 2000). Research has shown that this disproportionality is in evidence for various police activities such as arrests or tickets (e.g., Kochel et al. 2011; Langton and Durose 2013), use of force (e.g., Eith and Durose 2011; Engel and Calnon 2004; Smith 1986; Terrill and Mastrofski 2002), searches (e.g., Eith and Durose 2011; Gelman et al. 2007; Higgins et al. 2008, 2011; Langton and Durose 2013), pedestrian or vehicle stops (e.g., Engel et al. 2002; Gelman et al. 2007; Langton and Durose 2013; Lundman and Kaufman 2003), or Mobile Data Terminal (MDT) warrant inquiries (Meehan and Ponder 2002). There is also evidence of disproportionate intervention with, or otherwise differential treatment of, other groups by police based on age (e.g., Liederbach 2007; Rosenfeld et al. 2011), gender (e.g., Farrell 2015; Smith et al. 2006), socioeconomic status (e.g., Birkbeck and Gabaldon 1998), religion (Ammar et al. 2014), homelessness (e.g., Douglas 2011), residency status (Ammar et al. 2005; Davies and Fagan 2012), sexual orientation or gender identity (e.g., Amnesty International 2005; Bellafone 2013; Center for Constitutional Rights 2012; Demby 2012), disabilities (Bartley 2006; Chown 2010; Kewley 2001), and language abilities (e.g., Pisarski 1994), to name a few.

Two general explanations have been put forth to explain the overrepresentation of various groups, such as racial/ethnic minorities, among people with whom police intervene. Some have argued that the overrepresentation of racial and ethnic minorities in police interventions reflects the greater involvement of these groups in criminal behavior and police resistance (see e.g., Black and Reiss 1967; Bratton and Knobler 1998; Brown and Langan 2001; MacDonald 2001, 2003; Smith et al. 1984; White 2002). Another explanation is that this greater intervention is due to police bias and prejudice (Brown 1981; Chambliss 1994; Fyfe 1982; Jacobs and O'Brien

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1998; Sorenson et al. 1993).[1, 2] Regarding the latter, various theories have been put forth in the academic literature to characterize how bias might manifest in policing —and society more generally—to produce differential treatment (for reviews, see e.g., Engel et al. 2002; Leiber 2008; Tomaskovic-Devey et al. 2004; Warren et al. 2006). These include, for instance, racial threat, symbolic threat, attribution, liberation, focal concerns, and cognitive bias theories. Among the bias-explanations, the most widely cited by researchers and writers posits that officers act on the basis of their prejudicial attitudes (Engel et al. 2002).

Social scientists have been studying "prejudicial attitudes" since the 1950s and report that these attitudes come in different forms; they also report that the way bias and prejudice manifests in our society has changed over time (Schuman et al. 1997). These scientists distinguish between "explicit bias" and "implicit bias" and report that "our grandparents' prejudice" (Fiske 2008, p. 14) was more likely to be in the form of *explicit* bias and modern day bias is more likely to be *implicit.*

Explicit bias is generally what one envisions when thinking about prejudice and bias. With explicit biases, a person associates various groups with characteristics—mostly negative characteristics. These attitudes are based on animus or hostility toward the groups (Amodio and Mendoza 2010). As an example, a racist has explicit biases. A racist recognizes in himself animus or hostility towards a particular racial group, such as Blacks. This person could and would describe and justify this bias. The bias that this person has can impact behavior, producing discriminatory actions and the person is unconcerned about this impact (Devine 1989; Dovidio et al. 1996; Plant and Devine 1998).

As above, modern day bias is most likely to be in the form of *implicit* biases. Implicit biases are similar to explicit biases in that we link individuals to stereotypes or generalizations associated with their group or groups (e.g., groups based on gender, race, LGBT status). These biases can impact perceptions and behavior producing discriminatory behavior (Dasgupta 2004; Dovidio et al. 2002; Kang et al., 2012; McConnell and Liebold 2001). But, unlike explicit biases, implicit biases are not based on animus or hostility and these "implicit associations" can impact perceptions and behavior *outside* of conscious awareness (Devine 1989; Petty et al. 2009). Even individuals who, at the conscious level, reject prejudice and stereotyping, can and do manifest implicit biases (Graham and Lowery 2004; Kang et al. 2012).

Hardin and Banaji (2013) point out that our discussions about, and interventions to address, bias in society have to catch up with what we know from the science. They report, "…personal and public policy discussions regarding prejudice and discrimination are too often based on an outdated notion of the nature of prejudice" (p. 13). This has certainly been true as pertains to the discussion of bias in policing

[1]A third explanation, that gets less attention, is that racial groups differ in the *nature* of their offending, rather than the *extent* of it. See e.g., Mitchell and Caudy (2015).

[2]The words "bias" and "prejudice" are used interchangeable in this book to denote the human tendency to "prejudge" individuals based on the characteristics or stereotypes associated with their group membership.

and this deficiency has been detrimental both to the national discussion and to efforts to produce bias-free policing. Many police and community stakeholders have formed their views about biased policing based on their (outdated) understanding of how prejudice manifests in individuals. Knowing only about what we now label "explicit" biases, they have assumed that, to the extent there is bias in policing, it is produced by individuals with animus toward groups; the prejudice of these police professionals, they believe, is conscious and deliberate. That is, many in our society who are concerned about this issue, have assumed that officers with explicit biases, *and only officers with explicit biases,* produce bias in policing. This "old paradigm" (focusing only on explicit biases) needs to be replaced with the "new paradigm"—one in which we recognize that bias in policing, as in all of society, can be produced by either explicit *or* implicit bias.

Widespread acceptance of the old paradigm has been detrimental for three reasons. First of all, this characterization of bias in policing has produced distortions that have harmed the relationship between law enforcement and some of the diverse communities that they serve. There are subgroups of community members that believe that bias in policing is widespread—racial and ethnic minorities being a prime example (Carlson 2004; Drake 2014). If the individuals in these groups think that biased policing is widespread *and* if they believe, too, that it is produced only by individuals with explicit biases, they may well conclude that there are *a lot of* individuals in policing who have animus toward their groups and are consciously and deliberately acting upon that animus when they police. This produces a very negative picture of police personnel and has the potential to negatively impact community perceptions of agency legitimacy. Agencies need to be perceived as legitimate to effectively serve their communities (Tyler 1990, 2004; Tyler et al. 2015).

A second way the "old paradigm" has been detrimental is that it has produced distortions that lead police professionals to minimize the issue of biased policing and be very defensive about it. If police believe that biased policing is produced only by individuals with explicit biases, such as racists, and if they reject that they are themselves racist and see few or none around them, they may well decide that their agency and profession are being unfairly criticized about this problem, the occurrence of which, they believe, must be rare.

The third negative result of the belief that bias in policing is produced by individuals with explicit biases—and only by individuals with explicit biases—is the adoption of misguided interventions. Interventions that are based on outdated notions of how prejudice manifests in modern society would target only overt, intentional discrimination and ignore the well-meaning individuals in policing who have implicit biases. The traditional, "old paradigm" efforts might take the form of trying to change the hearts and minds of individuals thought to have animus toward groups and/or trying to identify individuals with overt, deliberate biased actions and holding them to account through discipline or even termination. Per Hardin and Banaji (2013, p. 14): "…an overemphasis on the bad apples may well be detrimental to considerations of policy because it assumes the problem of prejudice to be that of the few rather than that of the many."

The purpose of this book is to bring the modern science of bias to the profession of policing. This effort parallels similar ones occurring in other professions like medicine (see e.g., Gonzalez et al. 2014), the legal profession (e.g., National Center for State Courts, n.d.), and business (Lublin 2014) that have also historically dealt with bias based on outdated notions of how it manifests. In Chap. 2 of this book, I summarize the key research on implicit bias and discuss how implicit bias might manifest in the policing profession. Additionally, I examine the research on how individuals can reduce and manage their biases.[3] Chapter 3 of the book provides practical information for police leaders on how to facilitate bias-free policing within an agency—in light of our broader "new paradigm" perspective about how biased policing is produced.[4]

The importance of bias-free policing cannot be overstated. Biased policing is unjust. By definition, biased policing means that groups are being treated differently by police without justification. This is a violation of individual rights; specifically, it reflects a violation of the Equal Protection Clause of the U.S. Constitution. Biased policing can produce ineffective policing, such as when it leads police astray in their investigations and crime control interventions. Police may, for instance, focus on one particular group and miss the criminal behavior of another. Biased policing can have other serious consequences for both community members and police professionals. It can produce over-vigilance with certain groups that could have dire consequences for individuals. For instance, members of a group that is more likely than another to be arrested (despite similar behavior) face consequences such as incarceration, fines, and obstacles to employment and housing. Over-vigilance in the use of force, based on stereotypes about groups, can lead to unnecessary and/or unjustified deaths. Under-vigilance on the part of police may allow criminal wrongdoers to go free. Under-vigilance can also be unsafe; it can lead to officer injury or even death.

Perceptions of biased policing also have powerful consequences. When individuals or communities perceive the police to be biased in their application of the law, the police lose the legitimacy they need to do their work. Without it, individuals do not call the police to report crime; they do not provide police with the information they need to solve crimes. Without legitimacy, police professionals may not be believed by jurors evaluating their testimony in court. At the agency level, concerns of biased policing can lead to reduced budgets, calls for increased oversight, and demands for changes in leadership.

The consequences of both biased policing and the perceptions of it have played out quite visibly and powerfully since the events in Ferguson (MO) in August 2014,

[3]Comprehensive reviews of research on implicit bias are contained in three publications of the Kirwan Institute for the Study of Race and Ethnicity: *State of the Science*: *Implicit Bias Review 2013* and *State of the Science*: *Implicit Bias 2014*, both written by Cheryl Staats; and Staats et al. (2015) *State of the Science*: *Implicit Bias Review 2015*. These can be found at the Kirwan Institute web site at www.kirwaninstitute.osu.edu.

[4]An important additional audience consists of community stakeholders who, with this knowledge, can hold their law enforcement leaders to account.